

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEREK A WAITHE,

Defendant.

Case No. 01-cr-40017-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Derek A. Waithe's pro se Motion for Leave to Appeal in Forma Pauperis (Doc. 419). Waithe appeals this Court's denial of his pro se motion for recusal. At the time Waithe filed his motion for recusal, the Court had entered final judgment and there were no motions pending in the case. Therefore, the Court found there was nothing from which it could recuse itself, and denied the motion as moot.

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Waithe's position that the Court should recuse itself from a closed case in which there are no pending motions is patently unreasonable. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 419).

IT IS SO ORDERED.

DATED: April 16, 2008

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE